Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of **The Application by Qwest for Authorization Under Sec. 271 to Provide In-Region, InterLATA Service in Oregon, New Mexico, and South Dakota**	**WC Docket No. 03-11**

To: The Commission

REPLY COMMENTS OF ESCHELON TELECOM, INC. IN OPPOSITION TO THE APPLICATION OF QWEST FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICE IN OREGON, NEW MEXICO, AND SOUTH DAKOTA

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I. INTRODUCTION

Eschelon Telecom, Inc. ("Eschelon") submits these Reply Comments in opposition to the application of Qwest Communications International, Inc. ("Qwest") for authorization under Section 271 of the Communications Act to provide in-region, interLATA service in the states of Oregon, New Mexico, and South Dakota ("Qwest's Application").

A. PREVIOUS FILINGS ARE INCORPORATED BY REFERENCE.

Eschelon expressly incorporates by reference in this docket all information (*e.g.*, Comments, Ex Parte Comments, and Exhibits) provided by Eschelon in dockets relating to Qwest's previous 271 applications (Docket Nos. 02-148, 02-189, and 02-314).[1]

B. ISSUES APPLY ACROSS QWEST STATES.

All of the issues raised by Eschelon in the previous dockets and this docket need to be addressed to ensure Qwest has sufficiently opened its markets to competition as required under Section 271 of the Act. The problems arise in Oregon, New Mexico, South Dakota, or any other Qwest state under Qwest's processes. The problem of day-of-cut customer outages (which are reflected in trouble reports submitted within 72 hours of installation) not being captured in OP-5 applies, for example, equally in all of these states. If a trouble report is not measured in one Qwest state, the same type of trouble in another Qwest state (such as on the day of cut) is not measured in any other Qwest state for OP-5. Although discussions are underway to revise OP-5 to attempt to capture these omissions, the new Performance Indicator Definition(s) ("PID") has not yet been finalized or tested and is not yet associated with Performance Assurance Plans ("PAP").

II. THE PROBLEMS CONTINUE.

The problems identified by Eschelon in its previous filings continue. Exhibit 47 contains a summary of some of those significant continuing problems. For example, as Eschelon has previously described, Qwest has a practice of unilaterally making changes to rates and profiles without adequate notice to CLECs. Sometimes Eschelon only finds

[1] All of Eschelon's previous exhibits are incorporated by reference. Therefore, to avoid confusion, Eschelon begins numbering exhibits for this filing with Exhibit No. 47.

out about these changes when Qwest disrupts the provisioning process. This happened again recently in Oregon. Eschelon has ordered DS1 capable loops in Oregon since Spring of 2000. Although Eschelon believed that its interconnection agreement with Qwest allowed it to do so, Qwest insisted that Eschelon sign an amendment before it could order these loops. Eschelon had to sign the amendment in April of 2000. Since then, Eschelon has used the ordering process dictated by Qwest to order these loops.

Suddenly, with no notice to Eschelon, ***Qwest stopped accepting such orders from Eschelon through IMA*** in Oregon. On January 21, 2003, when the Eschelon provisioners ordered the loops using the normal process, they encountered a Qwest up-front edit that stopped the orders from going through. Eschelon had no reason to anticipate such an edit or ordering disruption. One day, Eschelon could place the orders in IMA, and the next it could not. Eschelon then began to try to submit its orders by facsimile. When Eschelon escalated the issue, Qwest said that Eschelon did not have a right to order these loops with basic installation under its contract. The contract, however, had not changed. Neither had the ordering process. Nonetheless, Qwest was suddenly rejecting all such orders, regardless of the type of installation requested. Although Qwest eventually relaxed the edit, Qwest is charging Eschelon the higher rate for loop installations with performance testing. Qwest is doing so even though Eschelon is not requesting testing, and Qwest is not providing test results to Eschelon.

In these cases, Qwest obviously makes an internal decision about contract interpretation in advance of doing systems work (such as the up front edit in this case). When the decision is made, Qwest should notify and discuss with CLECs. If there is a dispute about the contract terms, the parties can resolve it or get a commission to do so without disrupting the provisioning process. If Qwest is correct, the rate issue can be resolved with a bill credit. Instead, Qwest uses its power over the provisioning and billing process to unilaterally impose its interpretation, disrupt the process, and leave CLECs with the burden of disputing this.

In addition to the problems previously raised by Eschelon, Eschelon has reviewed the issues raised by WorldCom relating to OSS and EDI. Eschelon is in the process of implementing EDI, and Eschelon agrees with the concerns expressed by WorldCom.

In addition to problems continuing, some problems are getting worse. For example, Eschelon has previously described an unreasonable level of network outages. This problem has worsened. In January of 2003 through February 25, 2003, Eschelon has been adversely impacted by ***twenty-one*** Qwest-caused major network outages in Qwest territory.[2] *See* Exhibit 48. As the chart in Exhibit 48 shows, this number is a sharp rise from an already unreasonable level of such outages. The majority of these outages have affected dedicated DS-3 facilities. Because they are dedicated facilities, Eschelon is adversely impacted while Qwest is not.

These are only examples. Eschelon has previously identified other issues, and those are incorporated by reference.

[2] [1]Major Network Outage is defined as Qwest caused outage event impacting 25 or more lines and multiple customers with a common cause, where Qwest is responsible for the outage.

III. CONCLUSION

The FCC should deny Qwest's Application and encourage Qwest to resolve these problems before re-submitting its Application. Alternatively, at a minimum, the FCC should condition approval on resolution of these issues.

February 27, 2003 ESCHELON TELECOM, INC.

By: ________________________________

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